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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

In Re Bard IVC Filters Products
Liability Litigation

No. MD-15-02641-PHX-DGC

DORIS JONES,

Plaintiffs,

v.

C.R. BARD, INC., a New Jersey
corporation and BARD PERIPHERAL
VASCULAR, an Arizona corporation,

Defendants.

**PLAINTIFF'S MOTION IN LIMINE #6
AND MEMORANDUM IN SUPPORT
TO EXCLUDE EVIDENCE OR
ARGUMENT THAT PLAINTIFF'S
EXPERTS HAVE BEEN HIRED OR
USED BY HER LAWYERS IN OTHER
LITIGATION**

(The Honorable David G. Campbell)

(Oral Argument Requested)

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION IN LIMINE TO
EXCLUDE EVIDENCE OR ARGUMENT THAT PLAINTIFF'S EXPERTS HAVE
BEEN HIRED OR USED BY HER LAWYERS IN OTHER LITIGATION**

Plaintiff moves *in limine* for an Order precluding evidence or argument alleging that Plaintiffs' experts were hired by these same lawyers in other litigation or anything similar.

MEMORANDUM OF LAW

In the recent *Booker* trial, lead Bard trial counsel Richard North asked Plaintiff's expert Dr. Robert McMeeking about his work in the Cook Medical IVC filter litigation

1 Q And were you retained in [the Cook IVC] litigation by *some of the same*
2 *attorneys that retained you in this litigation?*

3 . . .

4 THE WITNESS: Yes, some of them are the same attorneys.

5 *Booker* Trial Transcript, Robert McMeeking Cross-Examination, Day 3, March 16, 2018,
6 at 626:15-20 (emphasis added). There are multiple evidentiary problems with this line of
7 questioning. To start with, the question has a misleading premise. Despite Dr.
8 McMeeking's answer in the affirmative, in fact none of Mrs. Jones' attorneys were
9 involved in preparing Dr. McMeeking for his testimony in the Cook bellwether trial.
10 Although there is overlap between the *leadership groups* for the Plaintiffs in the Cook and
11 Bard IVC filter MDLs, if Bard is allowed to ask these questions, then it opens the door to
12 Plaintiffs being able to explain to the jury through their experts and other witnesses about
13 what an MDL is, how MDL plaintiffs' counsel leadership groups work, and the thousands
14 of cases against both Bard and Cook that have been filed in courts all over the country.

15 What Bard really seeks to do with this line of questioning is to overly emphasize
16 the role of Plaintiff's counsel in matters beyond the Bard IVC filter litigation, as discussed
17 in more detail in Plaintiff's concurrently-filed Motion in Limine No. 7 addressing lawyer
18 advertising, which is incorporated here by reference. The implicit message is that
19 Plaintiff's attorneys are driving the litigation, hiring experts to sue multiple manufacturers
20 in lawsuits all over the country. Focusing the case and questioning witnesses on the role
21 of Plaintiff's attorneys in the litigation is inappropriate and has nothing to do with
22 Plaintiff's claims or any of Bard's defenses. As such, this line of questioning directed at
23 any of Plaintiff's experts is prohibited by Rules 402 and 403. *See Ruzhinskaya v.*
24 *HealthPort Technologies*, 2016 WL 7388371, at *7 (S.D.N.Y. 2016) (slip op.) (granting
25 motion in limine to preclude argument that the lawsuit was "lawyer-driven"; "The Court
26 will not permit HealthPort to defend this case by making insinuations or attacks directed
27 at class-action lawyers. The case is to be defended solely on the merits."); *Hart v. RCI*
28 *Hospitality Holdings, Inc.*, 90 F. Supp. 3d 250, 271-72 (S.D.N.Y. 2015) (granting motion

1 in limine to exclude evidence and argument regarding motivation and conduct of
2 plaintiffs' counsel and other attorney-related issues).

3 To be clear, Plaintiff is not seeking to exclude questioning or argument directed at
4 Dr. McMeeking's or any other of Plaintiff's experts' testimony or opinions in any other
5 litigation, including the Cook IVC filter litigation. Such inquiries are fair game to explore
6 bias or undermine the expert's opinions, and Plaintiff will seek to do the same with Bard's
7 witnesses. Nor is it improper to ask, as defense counsel did in the *Booker* trial, experts
8 like Plaintiff's damages expert Lora White how many times they have worked for
9 Plaintiff's attorneys' law firm, Gallagher & Kennedy. But it is improper and unfairly
10 prejudicial to link an expert's work in the Cook IVC litigation to these "same attorneys"
11 in Doris Jones' trial.

12 Accordingly, Plaintiff respectfully requests an Order granting this motion and
13 prohibiting at trial all evidence and argument relating to any of Plaintiff's experts working
14 for these "same attorneys," or anything similar, in the Cook IVC litigation.

15 RESPECTFULLY SUBMITTED this 18th day of April, 2018.

16 GALLAGHER & KENNEDY, P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April, 2018, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

/s/ Jessica Gallentine